

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
SEP. 11 2009
[Signature]
CLERK

MICHELLE KNOBLOCH,

Plaintiff,

vs.

AUTO CLUB INSURANCE ASSOCIATION,

Defendant.

CIV. #09- 4139

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

COMES NOW the Plaintiff, Michelle Knobloch, by and through her counsel of record, and for her causes of action against the Defendant, does hereby state and allege as follows:

NATURE OF THE ACTION

This is a diversity suit to recover underinsured motorists coverage (UIM) brought by Plaintiff Michelle Knobloch (hereinafter "Plaintiff") against Defendant Auto Club Insurance Association (hereinafter "Defendant"). Plaintiff was severely and permanently injured in an automobile accident that occurred on May 4, 2008. She exhausted the minimal limits available on the policy of the tortfeasor and vehicle responsible for the accident, and now seeks to be made whole pursuant to the underinsurance coverage available to her as an insured under the policy with the Defendant.

PARTIES

1.

Plaintiff is a citizen of the State of Minnesota and resident of Lincoln County.

2.

Upon information and belief, Defendant is a corporation duly organized and existing under the laws of the State of Michigan, with a principal place of business located at 1 Auto Club Drive, Dearborn, MI, which at all relevant times was duly authorized to issue insurance policies in the State of Minnesota.

JURISDICTION AND VENUE

3.

Plaintiff invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1332 based upon the diversity of the parties. The amount in controversy exceeds the sum of \$75,000.

4.

A substantial part of the events giving rise to this action occurred in South Dakota, and thus, venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)(2).

FACTS

6.

Defendant provided auto coverage to John Peters pursuant to an insurance policy issued as Policy Number AUTO07302937 ("the Policy"). *See* Exhibit A. The Policy was fully paid, effective, and in force from March 22, 2008, through September 22, 2008.

7.

The Plaintiff was an insured under the Policy, which provided underinsurance coverage up to a limit of Fifty Thousand Dollars (\$50,000). *See* Exhibit B.

8.

On May 4, 2008, while the Policy was in force, the Plaintiff was severely and permanently injured in an automobile accident while riding as a passenger driven by John Peters.

See Exhibit C. The accident and the Plaintiff's resulting injuries and other damages were the fault of Elijah Richmond Rodasti. Rodasti subsequently pled guilty to a citation filed against him as a result of the accident.

9.

The tortfeasor and the vehicle that he was driving were underinsured. Rodasti had personal liability insurance limits of only \$100,000. These policy limits were substantially less than any amount reasonably necessary to compensate the Plaintiff for her injuries and other damages sustained in the accident.

10.

The limits of Rodasti's policy were tendered to Plaintiff. Pursuant to the procedure detailed in *Schmidt v. Clothier*, 338 N.W.2d 356 (Minn. 1983), Defendant was placed on notice of the tender of limits and was offered the opportunity substitute its own draft. Plaintiff informed Defendant that it would allow a credit in the amount of the settlement against any liability which might be found to exist in further proceedings against Rodasti or against Defendant directly on UIM coverage. Defendant declined and waived the opportunity to substitute its draft or object to the settlement.

11.

On or about June 15, 2009, the Plaintiff accepted the limits on the Rodasti policy covering the tortfeasor and her vehicle and entered into a Release. *See* Exhibit D.

12.

The Release included the following provision: "Knobloch intends to execute this Release in favor of Rodasti and USAA Casualty Insurance, and has provided due noticed of this proposed settlement to Knobloch's underinsured motorist carrier, AAA Insurance. Furthermore, Knobloch

has made or intends to make a claim for additional amounts for injuries and damages she sustained as a result of the accident to be paid through Knobloch's underinsured motorist policy with AAA Insurance." *See* Exhibit D.

13.

The insurance limits received from the policy covering the tortfeasor pursuant to the Release do not come close to fully compensating the Plaintiff for her serious and permanent injuries and other damages that she suffered in the automobile accident caused by the tortfeasor's negligence, which are in excess of \$111,000.

14.

Plaintiff thereafter sought recovery of UIM benefits from Defendant for Plaintiff's uncompensated damages, in accordance with the terms of the Policy, and Defendant refused and still refuses payment of the same.

COUNT ONE

15.

Plaintiff hereby realleges paragraphs 1-14 and all previous paragraphs and incorporates them as though fully set forth herein.

16.

By virtue of its Policy of insurance in effect on May 4, 2008, and Plaintiff's status as an insured under the policy, Defendant is contractually obligated to pay Plaintiff underinsured motorist benefits as a result of the automobile accident caused by the tortfeasor that occurred while the Plaintiff was riding as a passenger in a vehicle driven by the Defendant's insured, John Peters.

17.

Defendant breached its duty to pay Plaintiff underinsured motorist benefits pursuant to the Policy.

18.

Defendant's breach of its duties under the Policy has resulted in substantial damages to the Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays for the following relief:

- (1) For judgment against the Defendant in an amount to be determined by the jury that will fully compensate Plaintiff for the severe and permanent injuries and all other damages that she has sustained;
- (2) For pre-judgment and post-judgment interest;
- (3) For costs and disbursements herein; and
- (4) For such other and further relief as the Court deems just and equitable.

Dated this 11th day of September, 2009.

**JOHNSON, HEIDPRIEM, ABDALLAH &
JOHNSON, L.L.P.**

BY 

Scott N. Heidepriem (scott@jhajlaw.com)

P.O. Box 2348

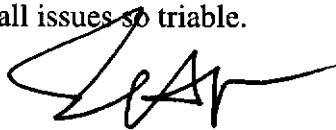
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Attorneys for the Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

A handwritten signature in black ink, appearing to read 'Scott N. Heidepriem', is written over a horizontal line.

Scott N. Heidepriem